



**Board of Ethics and Government
Accountability
Office of Open Government**

Freedom of Information Act





OVERVIEW



- Board of Ethics and Government Accountability
- Role of the Office of Open Government
- Proactive Disclosure
- Commonly Applied Exemptions
- FOIA Process/Appeals



Board of Ethics and Government Accountability



- Office of Government Ethics
 - Training
 - Advice
 - Investigations
 - Financial Disclosure Filings
 - Lobbyist Registration & Activity
- Office of Open Government
 - Training
 - Compliance
 - FOIA
 - Open Meetings Act
 - Formal and Informal Advice

Best Practices Report

+ Independent Oversight



- Freedom of Information Act (DC Official Code §2-531 to 538)
- Training
 - Public Bodies
 - Officials
 - Employees
 - DC Municipal Regulation 1803.2



Open to the Public

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+ District FOIA Applies To

Public Body

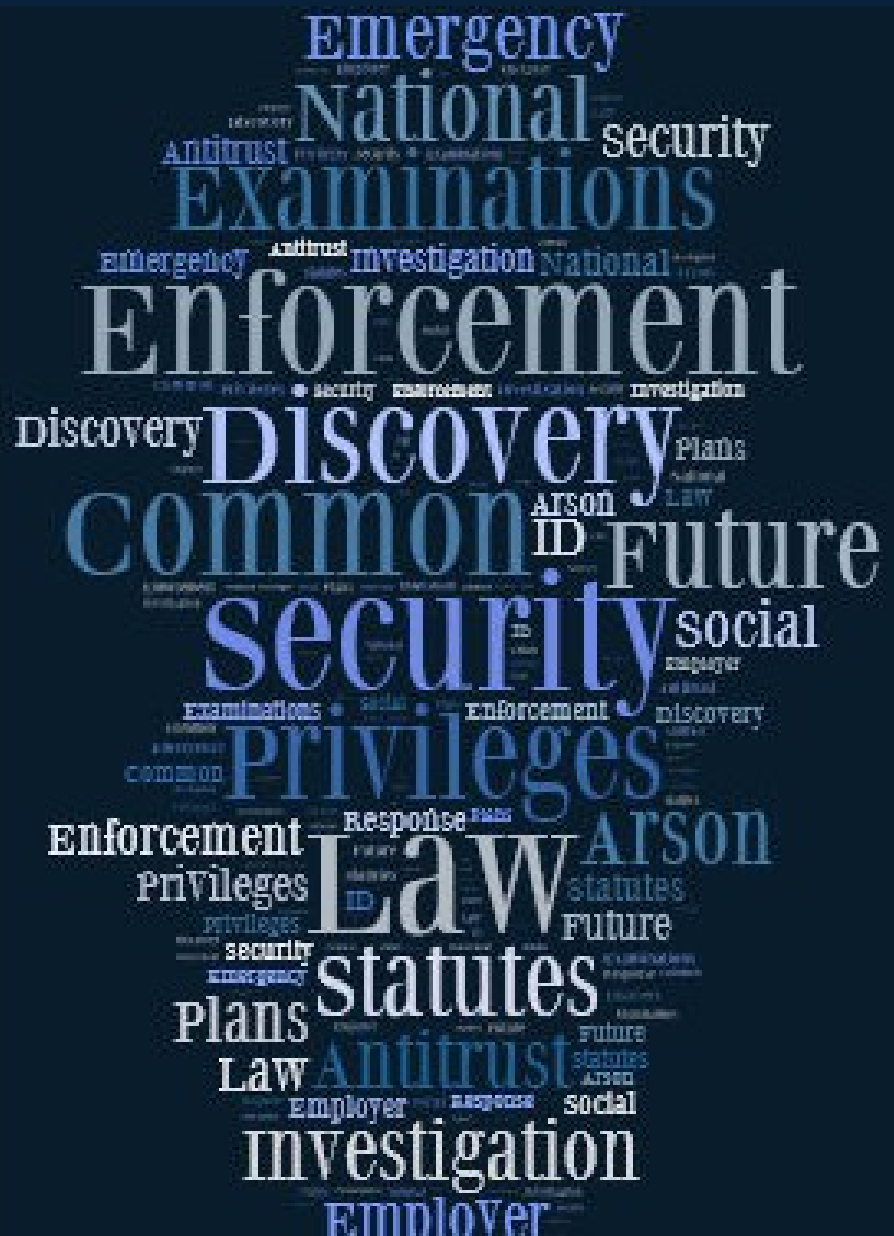
- Office of the Mayor
- Any agency
 - Subordinate
 - Independent
- Council

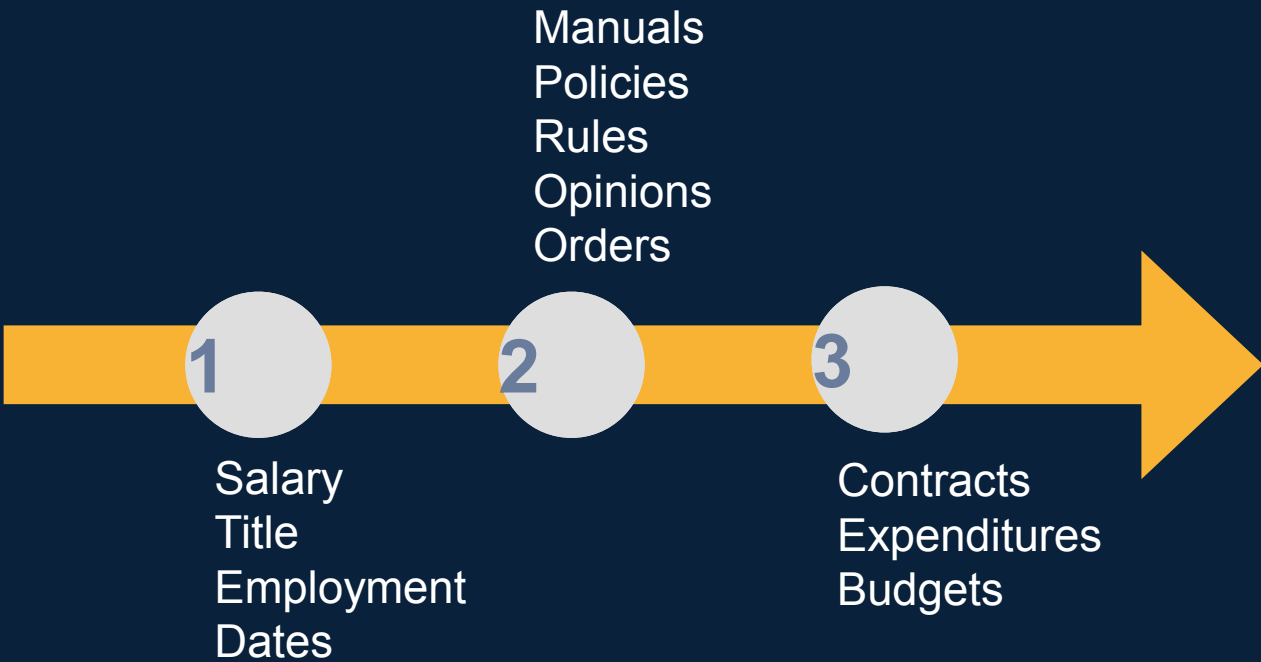
Public Record

- Books
- Documents hard copy/electronic
- Photographs
- Recordings
- Emails
- Maps



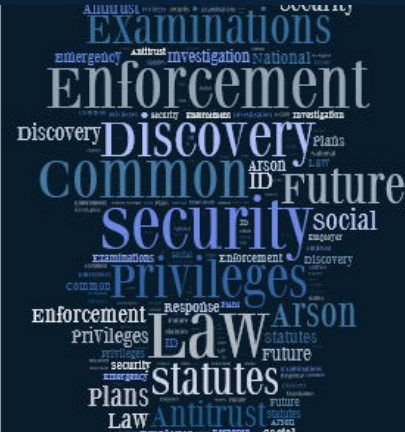
Mandatory & Proactive D i s c l o s u r e







Mayor's Memo 2011-1





Presumption of Disclosure – Judicial Opinions



- Barry v. Washington Post Co., 529 A.2d 319, 321 (D.C. 1987)
- Dunhill v. Director, District of Columbia Dept. of Transportation, 416 A.2d 244, 247 n. 5 (D.C. 1980)



Exemptions §2-534

+ 14 Categories



- Trade Secrets/Confidential Information
- Personal Privacy
- Law Enforcement
- Common Law Discovery Privileges
- Future Examinations
- Other Statutes
- National Security
- Antitrust
- Arson Investigation
- Emergency Response Plans
- Social Security and Federal Employer ID Numbers
- Whistleblower's ID
- Homeland Security Proceedings
- Sealed Criminal Records



Commonly Applied Exemptions

Trade Secrets

Personal Privacy

Law Enforcement

Deliberative Process

Attorney-Client Privilege/Work Product

Other Statutes

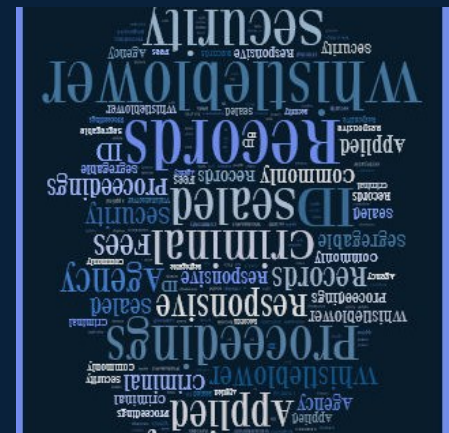




Trade Secrets

DC Code §2-534(a)(1)

Trade secrets and commercial or financial information obtained from outside the government, to the extent that disclosure would result in substantial harm to the competitive position of the person from whom the information was obtained.



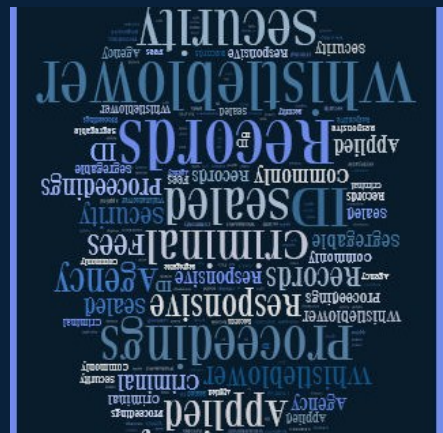


Personal Privacy

DC Code §2-534(a)(2)

Information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.

Redact: Social Security numbers, home addresses, home phone numbers, account numbers, dates of birth, personnel records.

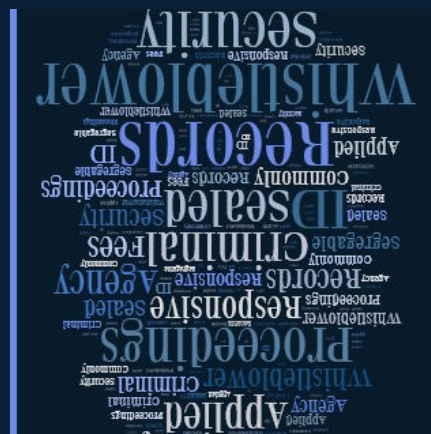




Law Enforcement

DC Code §2-534(a)(3)

Investigatory records compiled for law enforcement purposes, including records of Council investigations and investigations conducted by the Office of Police complaints, **but only to the extent that the productions of such records would:**



(A) Interfere with:

- (i) Enforcement proceedings;
- (ii) Council investigations; or
- (iii) Office of Police Complaints ongoing investigations;

(B) Deprive a person of a right to a fair trial or an impartial adjudication;

(C) Constitute an unwarranted invasion of personal privacy;



(D) Disclose the identity of a confidential source and, in the case of a record compiled by law-enforcement in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished by only the confidential source;

(E) Disclose investigative techniques and procedures **not generally know outside government** or;

(F) Endanger the life or physical safety of law enforcement personnel;

The method through which an agency creates policies, opinions, rules and regulations.

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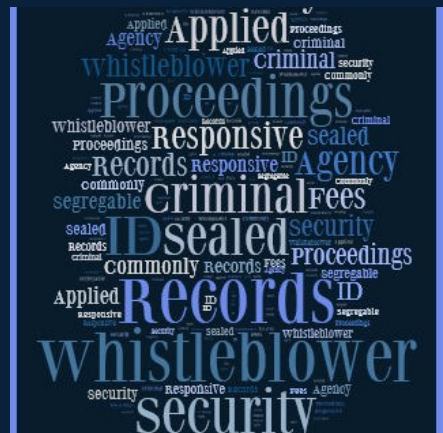
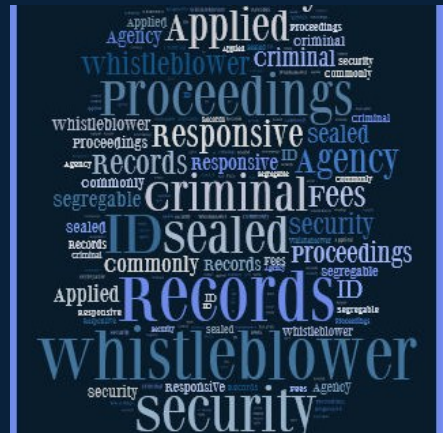


Attorney Client Privilege

DC Code §2-534(a)(4)

Extends only to an attorney from a client/client to an attorney.

Protects confidential communications between an attorney and a client when the agency is the client, and when privilege is necessary to obtain legal advise.





Attorney Work Product Privilege

DC Code §2-534(a)(4)

Applies to documents prepared by or for an attorney in anticipation of litigation, no matter the status or stage of the litigation.

Protects from disclosure those documents prepared by an attorney which reveal his/her litigation strategy.





Other Statutes

DC Code §2-534(a)(6)(A-B)

Information specifically exempted from disclosure by statute (other than this section), provided that such statute:

(A) Requires that the matters be withheld from the public in such a manner to leave no discretion on the issue; or

(B) Establishes particular criteria for withholding or refers to particular types of matters to be withheld.





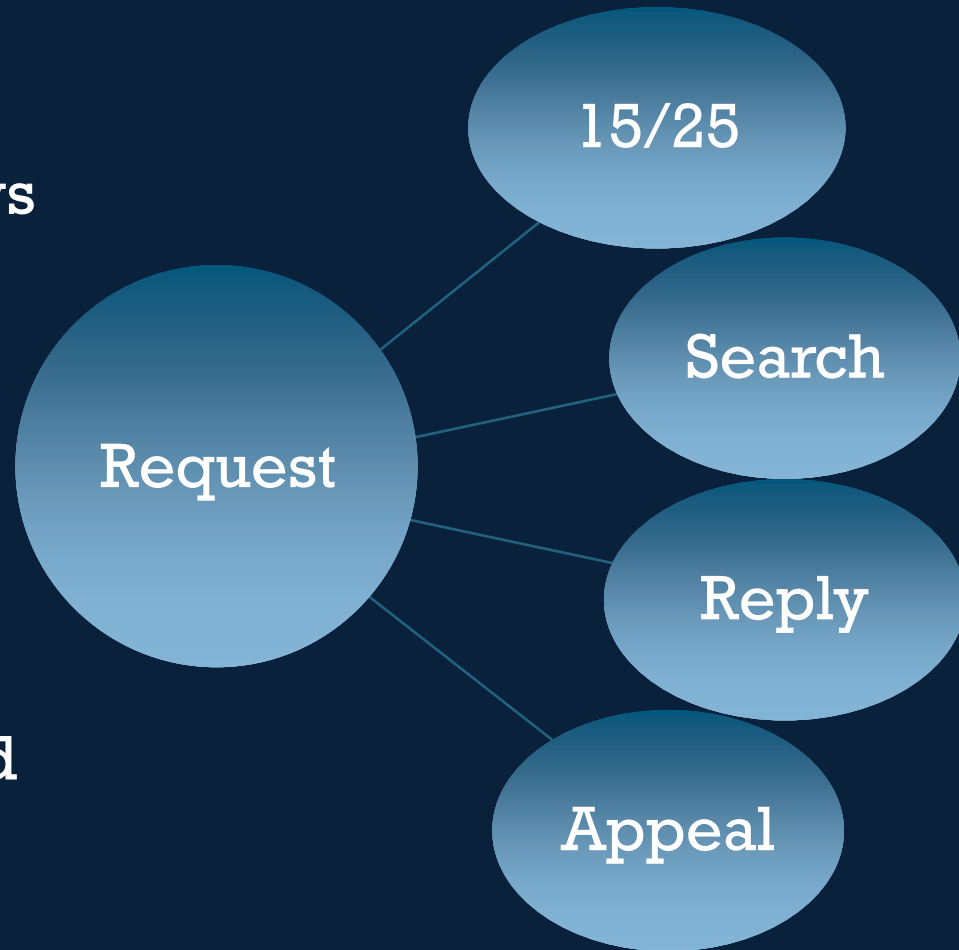
Redaction Rule

- Reasonably segregable portions of documents may be released.



+ DC Code §§2-532-533 and 2-537

- Business days
- Reasonable
- Adequate
- Mayor
- DC Superior Court 2nd



+ Responses to FOIA Requests

- **NOT REQUIRED TO:**
 - Create records
 - Answer questions in request
 - Obtain records from another agency



- **FOIA requests MUST BE:**
 - Asked with particularity



Fee Types

General Fund

Must be disclosed

Agency may waive

Typical Allocation





Waiver

Fees DCMR 1-408



WAIVER	
Full waiver	Prior waiver does not set precedent
Agency fee schedule	



Requesters



Fees Which May Be Charged				
		Search	Review	Duplication
Types of Requesters	Commercial	Y	Y	Y
	Educational Noncommercial Scientific News Media			Y
	All Others	Y		Y



O t h e r Requirements

Detailed Records

Annual Reporting





+ Contact Info

Traci L. Hughes, Esq.

Director, Office of Open
Government

441 4th Street NW – Suite 540S

202.481.3406 dd

202.557.0087

traci.hughes@dc.gov

